IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

WP(C).No. 31112 of 2006(D)

PETITIONER:

C.C.KUNJU KUNJU, S/O. PETER,
DESINGANADU NAGAR, HOUSE NO.34,
ASRAMAM P.O., KOLLAM-2.
(FORMERLY ASSISTANT ENGINEER, DREDGING UNIT,
NEENDAKARA PORT, KOLLAM).

BY ADV. SRI.V.V.RAJA
SRI.R.RENJITH

RESPONDENTS:

1. **STATE OF KERALA, REPRESENTED BY**
   THE SECRETARY, DEPARTMENT OF FISHERIES AND PORTS,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE DIRECTOR OF PORTS,**
   OFFICE OF THE DIRECTOR OF PORTS,
   THIRUVANANTHAPURAM.

3. **THE ACCOUNTANT GENERAL,**
   OFFICE OF THE ACCOUNTANT GENERAL,
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. BASANT BALAJI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.31112/2006 D

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER DTD. 22/11/1995.**

EXT.P2: **COPY OF THE GOVERNMENT ORDER DTD. 29/03/2001.**

EXT.P3: **COPY OF THE JUDGMENT DTD. 16/03/2005 IN CRL.A.NO.268/99.**

EXT.P4: **COPY OF THE REPRESENTATION DTD. 15/07/2005 SUBMITTED BY THE PETITIONER.**

EXT.P5: **COPY OF THE JUDGMENT IN WP(C) NO.775 OF 2006 DTD. 16/01/2006.**

EXT.P6: **COPY OF THE NOTICE DTD. 12/05/2006.**

EXT.P7: **COPY OF THE REPRESENTATION DTD. 25/05/2006.**

EXT.P8: **COPY OF THE JUDGMENT PASSED BY THIS HON'BLE COURT ON 21/07/2006 IN WP(C) NO.19205/2006.**

EXT.P9: **COPY OF G.O.(RT) NO.460/2006/F&PD DTD. 16/10/2006.**

/TRUE COPY/

P.A.TO JUDGE

KSS

ANTONY DOMINIC,J.

W.P (C) No. 31112 of 2006

Dated this the 18th day of August, 2007

J U D G M E N T

While working as Assistant Engineer in the department of Fisheries and Ports, petitioner was arrayed as an accused in a case arising out of Prevention of Corruption Act. Thereupon, he was placed under suspension from 8.7.1994 and during the pendency of the case, he was reinstated by Exhibit-P1 order. When he was convicted by the Special Judge by Judgment dated 18.3.1999, and sentenced to imprisonment, he was again placed under suspension with effect from 23.7.1999. In view of the conviction that he had suffered he was dismissed from service by Exhibit-P2 order and soon thereafter, he reached the age of superannuation on 31.3.2002. Meantime, he had filed an appeal against the judgment of the trial court as Crl.A. No.268/1999. This court by Exhibit-P3 judgment dated 16.3.2005 allowed the Criminal Appeal on merits and acquitted the accused.

2. Thereafter, the petitioner sought regularisation of the period he was kept under suspension. Pursuant to Exhibit-P5 judgment of this court, Exhibit-P6 show cause notice was issued

to him why the provisional decision of the respondents as contained therein should not be confirmed. He filed his reply to Exhibit-P6. As there was no further progress again the petitioner had to file a writ petition which resulted in Exhibit-P8 judgment. To compel the respondents to pass orders on Exhibit-P6 petitioner had to initiate contempt of court proceedings and thereafter Exhibit-P9 order was issued. Relevant portion of which is extracted below for reference.

> "In the above circumstances, Government do not find any reason to reconsider the provisional decision already taken in the matter and hence order as follows:
>
> i) the Suspension period from 13-7-94 to 14-11-95 and from 23-7-99 to 28-3-01 (date prior to his termination from service) and the period from 29-3-01 to 31-3-02 (the period from his termination to the date of his Superannuation from service if this case did not exist) is treated as duty for all purposes except for full pay and allowances and for accrual of Earned Leave and the pay is limited to subsistence allowance already drawn.
>
> ii) the intervening period from 15-11-95 to the date on which he actually joined duty (22-11-95) is treated as joining time and Leave due as admissible as per note 2 below Rule 56 (B) Part I KSRs.
>
> Government also order that Director of Ports will take immediate steps to release the eligible service benefits and pensionary benefits to Sri.C.C. Kunjukunju accordingly.

3. Reading of Exhibit-P9 shows that the Government proceeded as though the acquittal of the petitioner was not a honourable acquittal in terms of Exhibit-P3 judgment. The petitioner was not satisfied with Exhibit-P9 and therefore this writ petition was filed seeking to quash Exhibit-P9 and for a declaration that he is entitled to all service benefits treating as he continued in service till 31.3.2002 and retired on that date. Learned Government Pleader on the other hand submits that the petitioner was involved in a criminal case, for which, the Government could not be found fault with and even if he was acquitted at a later stage, for the period he was kept out of service, by force of the Rules that governed his conditions of service, the Government should not be mulcted with the monitory liability. It is also contended that except for the salary for the period he was kept out of service for all other purposes the service have been regularised.

4. Learned counsel for the petitioner would submit that the acquittal of the petitioner was a honourable one and it should be deemed that he continued in service till 31.3.2002 and that

for the whole period he should be given all benefits including wages. For this purpose, learned counsel for the petitioner would rely on Rule 56 (2) of Part I of Kerala Service Rules and according to him the authorities have no discretion in the matter, but to reckon the period and pay the benefits. He has also relied on the judgments of this court reported in Ramachandran Pillai Vs. Kerala State Electricity Board [1980 KLT 608] Sailesh Vs. State of Kerala [2004 (3) KLT 611.] Susamma Vs. State of Kerala [2002 (1) KLT SN 45]. Relying on these judgments, the counsel would submit that the petitioner should be awarded all benefits for the period in question.

5. I am not in a position to accept the contention of th petitioner. This is a case where the petitioner was arrayed as an accused and the offences alleged against him were under the Prevention of Corruption Act. He suffered conviction initially at the hands of the trial court and was acquitted only by Exhibit-P3 judgment of this court. For the involvement of the petitioner in the criminal case, the Government is in no way responsible. That apart, for the period in question, the petitioner has not contributed to the employer in any manner. It is due to the

operation of the conditions of service applicable to the petitioner that he was initially placed under suspension and later dismissed on conviction. For none of the actions that have been taken by the Government, can the Government be faulted to saddle it with the financial liability of payment of wages for the periods in question. The rule relied on by the petitioner casts a discretion to the Government to pass such orders as is warranted in the circumstances.

6. A case identical on facts was considered by the Honourable Supreme Court in Ranchhodji Chaturji Thakore Vs. Supdt. Engineer, Gujarat Electricity Board (1996) 11 SCC 603 wherein, back wages were denied on the ground that department was no way concerned with the criminal case and therefore, cannot be saddled with the liability for back wages for the period when a Government servant was out of service during/after conviction suffered by him in the criminal case. This judgment has been followed by the Supreme Court in the Union of India & others Vs. Jaipal Singh [2004 (1) SCC 121] where it has been held as follows:

> "If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service.

7. Applying the law as laid down by the Apex Court in the aforesaid two judgments, I hold that the Government cannot be made liable for wages for the period when the petitioner had to remain out of service on account of his involvement in the criminal case and the conviction he suffered.

8. However, it is seen that the said period cannot be excluded for all purposes. He will be entitled to all benefits other than the wages for the period in question. According to the Government Pleader service for the period in question has already been regularised, which has been disputed by the learned counsel for the petitioner. Therefore, I clarify that, if orders have not been passed in this regard, the same shall be done within two months from the date of receipt of a copy of this judgment, reckoning the aforesaid period for all purposes

including that of pension.

With these observations, writ petition is disposed of.

(ANTONY DOMINIC,JUDGE)

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/True copy/

P.A to Judge

K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007